Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1418

THE CITY OF CHICAGO, a municipal corporation; RICHARD J. DALEY, Mayor of the City of Chicago; and JAMES B. CONLISK, JR., Superintendent of the Chicago Police Department,

Petitioners,

vs.

CONFEDERATION OF POLICE, a not-for-profit corporation, and the Class of the Confederation of Police, by JAMES M. JOHNSON, JAMES T. BRUCE, FRANK GRASZIER, JOHN BURSINSKI, THOMAS HOFFMAN and JACK HAWKONSEN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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TABLE OF CONTENTS

PAGE

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 3

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 4

STATEMENT OF THE CASE:

The Complaint 7

The Trial 7

The Decision Of The District Court 8

The Opinion Of The Court Of Appeals 8

REASONS FOR GRANTING A WRIT:

I.

The Recognition Of A Due Process Right To A Grievance Procedure And Collective Bargaining Is Unprecedented.

The Public Importance Of Issues Decided In The Court Of Appeals Decision Merits The Attention Of This Court. 10

II.

Even Assuming That A Grievance Procedure Is A Constitutional Right The Circuit Court's Injunctive Intrusion Into The Internal Administrative Procedures Of The Respondent Police Department Was Improper Because There Was No

Finding Of Constitutional Inadequacy In Existing Procedures.

The Decision Of The Court Of Appeals Is Contrary To The Decision Of This Court In *Rizzo* v. *Goode*, U.S. (1976), 46 L.Ed.2d 561. 14

CONCLUSION 16

APPENDICES:

A—Memorandum Opinion and Order of the District Court 1a

B—Opinion of the Court of Appeals 11a

LIST OF AUTHORITIES CITED

Cases

Board of Regents v. Roth, 408 U.S. 564 (1972) 9, 11, 12
Cook County Police Association v. City of Harvey, 8 Ill. App. 3d 147, 289 N.E. 2d 226 (1972) 12
Goss v. Lopez, 419 U.S. 565 (1975) 9, 11, 13, 14
Muscare v. Quinn, 520 F.2d 1212 (7th Cir. 1975) (cert. granted, October 14, 1975; argued March 30, 1976) .. 12
Perry v. Sindermann, 408 U.S. 593 (1972) 9, 11, 12
Rizzo v. Goode, ... U.S. ..... (1976), 46 L.Ed.2d 561 .. 14, 15

Constitutional Provisions, Statutes and Text

Constitution of the United States, Amendment XIV 4
United States Code, Title 42, § 1983 4
Illinois Revised Statutes, 1973, Chapter 24, par. 10-1-18.1 ..... 4, 10
Note: Public Sector Grievance Procedure, Due Process, and the Duty of Fair Representation, 89 Harvard L. Rev. 752 11

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The petitioners, the City of Chicago, a municipal corporation; Richard J. Daley, Mayor of the City of Chicago; and James B. Conlisk, Superintendent of the Chicago Police Department, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered in this proceeding on January 15, 1976 (rehearing denied March 8, 1976).

OPINIONS BELOW

The memorandum opinion and order of the district court in favor of defendants-petitioners entered October 7, 1974 is reported at 382 F. Supp. 624 and is reproduced in Appendix A.

The opinion of the Court of Appeals, filed January 5, 1976, reversing the judgment of the district court, is reported at ..... F. 2d ..... (7 Cir., 1976), and is reproduced in Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered on January 15, 1976. On March 8, 1976 the Court of Appeals denied defendants' petition for a rehearing with suggestions for rehearing *en banc*. Chief Judge Fairchild and Judges Sprecher, Cummings and Swygert voted to deny rehearing and Judges Bauer, Tone and Pell voted to grant rehearing.

A motion for stay of mandate pending application to this Court for a writ of certiorari was filed on March 12, 1976. On March 18, 1976 an order was entered by the Circuit Court staying the mandate until April 7, 1976.

The jurisdiction of this Court herein rests on U.S. Code Title 28, § 1254(1).

QUESTIONS PRESENTED

1. Whether the Due Process Clause of the Fourteenth Amendment mandates hearing procedures relating to scheduling of vacations, duty assignments, hours of duty, station house assignments, the granting of leaves of absence and other administrative matters for civil service police personnel.

2. Whether a collective bargaining procedure is a Fourteenth Amendment right where the state law upon which the property interest is premised is limited to provisions for discharge and suspension procedures and where collective bargaining has specifically been held not to be a right under the law of the state.

3. Whether, assuming that there is a constitutional right to a grievance procedure, a federal court should enjoin upon a municipal defendant a judicially-fashioned grievance procedure absent a finding that defendants' present procedure is constitutionally inadequate.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTION OF THE UNITED STATES

Amendment XIV:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any persons of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

UNITED STATES CODE

Title 42, § 1983:

> "Every person who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

Illinois Revised Statutes, 1973, Chapter 24, par. 10-1-18.1:

> **10-1-18.1 Police removals or suspensions—Cities over 500,000—Notice—Hearings—Determinations.]** § 10-1-18.1. In any municipality of more than 500,000 population, no officer or employee of the police department in the classified civil service of the municipality whose appointment has become complete may be removed or discharged, or suspended for more than 30 days except for cause upon written charges and after an opportunity to be heard in his own defense by the Police

> Board. Before any such officer or employee may be interrogated or examined by or before any disciplinary board, or departmental agent or investigator, the results of which hearing, interrogation or examination may be the basis for filing charges seeking his removal or discharge, he must be advised in writing as to what specific improper or illegal act he is alleged to have committed; he must be advised in writing that his admissions made in the course of the hearing, interrogation or examination may be used as the basis for charges seeking his removal or discharge; and he must be advised in writing that he has the right to counsel of his own choosing present to advise him at any hearing, interrogation or examination; and a complete record of any hearing, interrogation or examination shall be made and a complete transcript thereof made available to such officer or employee without charge and without delay.
>
> Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held.
>
> The Police Board shall establish rules of procedure not inconsistent with this Section respecting notice of charges and the conduct of the hearings before the Police Board, or before any member thereof appointed by the Police Board to hear the charges. The Police Board, or any member thereof, is not bound by formal or technical rules of evidence, but hearsay evidence is inadmissible. The person against whom charges have been filed may appear before the Police Board or any member thereof, as the case may be, with counsel of his own choice and defend himself; shall have the right to be confronted by his accusers; may cross-examine any witness giving evidence against him; and may by counsel present witnesses and evidence in his own behalf.

The Police Board or any member thereof designated by it, may administer oaths and secure by its subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. All proceedings before the Police Board or member thereof shall be recorded. No continuance may be granted after a hearing has begun unless all parties to the hearing agree thereto. The findings and decision of the Police Board, when approved by the Board, shall be certified to the superintendent and shall forthwith be enforced by the superintendent.

A majority of the members of the Police Board must concur in the entry of any disciplinary recommendation or action.

Nothing in this Section limits the power of the superintendent to suspend a subordinate for a reasonable period, not exceeding 30 days.

STATEMENT OF THE CASE

The Complaint

In their amended complaint the respondents, an organization of police officers and certain members and officers thereof sought "a written procedure for collective bargaining and the processing of grievances in relation to hours, wages, and working conditions . . ." (App. B. p. 11a). Their complaint alleged that they were denied rights guaranteed by the First and Fourteenth Amendments as a consequence of petitioners' refusal to provide such procedures. The complaint alleged that respondents, as members of the Chicago Police Department were denied equal protection as a result of the petitioners' extension of collective bargaining rights and grievance procedures to other municipal employee groups while refusing to provide such procedures for police officers.

The Trial

At trial respondents presented testimony which indicated that the petitioners did not collectively bargain with police officer organizations. They similarly presented evidence to support their allegations that petitioners provided no written procedures for the presentation of grievances relating to duty assignments, station and shift assignments, vacation schedules and leaves of absence. Respondents also presented evidence which indicated that employees of the Chicago Board of Education and the Chicago Public Library did have collective bargaining and a grievance procedure.

Petitioners presented evidence and statutory authority to show that the Chicago Board of Education and the Chicago Public Library Board are separate entities independent of petitioners with individual responsibility for their employees' salaries and working conditions. Petitioners also presented evidence of instituted procedures for the presentation of grievances by police officers. Finally petitioners submitted evidence of the para-military nature of the police department and the qualities of the police department which distinguishes its employment needs and problems from those of other city departments.

The Decision Of The District Court

After trial the District Court in its memorandum opinion and order (App. A) held that there is no constitutional right to mandatory collective bargaining or grievance procedures. The District Court also found that the charge of a denial of equal protection was not proved in view of the fact that petitioners were not responsible for the fixing of policies with employees of the Board of Education and the Library Board. The court concluded further that even if it could be shown that petitioners discriminated against police officers in denying them the procedures they seek the peculiar nature of police work justifies existing departmental policies.

The Opinion Of The Court Of Appeals

The judgment of the Court of Appeals for the Seventh Circuit (App. B) reversed and remanded the decision of the District Court. The Court of Appeals agreed with

the District Court that no discrimination against police department employees had been shown. Nor did the reviewing court premise its decision upon any First Amendment rights. Relying upon *Board of Regents v. Roth*, 408 U.S. 564 (1972), *Perry v. Sindermann*, 408 U.S. 593 (1972), and *Goss v. Lopez*, 419 U.S. 565 (1975), the Court of Appeals concluded that respondents' due process rights included a right to a grievance procedure. Although it noted that *Roth* and *Perry* dealt with termination of employment and that the instant matter deals with conditions of employment the court concluded that under the reasoning of those cases the tenure of a public employee established due process rights extending beyond the mere continuance of employment to other "adverse job actions." The district court was directed on remand to study "the forms that the adverse job action may take" and to fashion a grievance procedure appropriate for use in the police department.

With respect to the collective bargaining issue the Court of Appeals concluded that respondents had failed to establish any equal protection claim but concluded that there may be a due process basis for the establishment of mandatory collective bargaining as a necessary means of implementing a grievance procedure. The Court's consideration of the issue was as follows:

> Although we refrain from holding today that patrolmen have a *per se* constitutional right to collective bargaining, we recognize that the district court, upon analysis of the protection required for the procedural rights discussed in Part I of this opinion [grievance procedure], may conclude that collective bargaining is a necessary adjunct to such protection. [App. B. p. 19a]

REASONS FOR GRANTING A WRIT

I.

THE RECOGNITION OF A DUE PROCESS RIGHT TO A GRIEVANCE PROCEDURE AND COLLECTIVE BARGAINING IS UNPRECEDENTED.

THE PUBLIC IMPORTANCE OF ISSUES DECIDED IN THE COURT OF APPEALS DECISION MERITS THE ATTENTION OF THIS COURT.

Respondents' amended complaint sought "a written procedure for collective bargaining and the processing of grievances in relation to hours, wages and working conditions for sworn personnel of the Chicago Police Department" (App. B, p. 11a). No issues relating to suspensions, terminations of employment or disciplinary issues were raised. Nor was any question presented concerning the rights of public employees to organize or to participate in labor organizations. Rather, as the decision of the court of appeals demonstrates, the subject matter of this suit is exclusively conditions of employment and related economic issues.

The court of appeals, citing the Illinois statute which provides for disciplinary hearing procedures for police officers (Ill. Rev. Stat. 1973, ch. 24, § 10-1-18.1) found a tenure property interest upon which it premised a due process right to hearings or grievance procedures in relation to hours, wages and working conditions. The court also authorized an injunction imposing collective bargaining as a means of implementing an effective grievance procedure.

For the several reasons explained *infra* the petitioners submit that the decision of the court of appeals is inconsistent with and, indeed contrary, to decisions of this Court. Whether or not the case has been correctly decid-

ed, however, the issues it raises are of compelling concern both to petitioners and the several thousand members of the respondent police organization, and also to civil service employers and employees generally. No case cited by the court of appeals or discovered by petitioners has held that either a grievance procedure or collective bargaining is a constitutionally guaranteed right. Legislatures and public employment administrators have labored to determine first, whether public employees should be granted these procedures and, second, the forms any such procedures should take. See Note: *Public Sector Grievance Procedure, Due Process, and the Duty of Fair Representation*, 89 Harvard L. Rev. 752. The decision of the court of appeals affirmatively and conclusively resolves the question of the constitutional right to such procedures and will thrust upon the federal courts the responsibility for defining and formulating them. Petitioners earnestly submit that the importance of these issues, the extremely large number of individuals and public employers affected and the substantial burden to be imposed upon the courts are considerations which merit the early attention of this Court.

In reaching its conclusion the court relied upon *Board of Regents v. Roth*, 408 U.S. 564 (1972), *Perry v. Sindermann*, 408 U.S. 593 (1972), and *Goss v. Lopez*, 419 U.S. 565 (1975). The Court's analysis of the *Roth* and *Perry* decisions led it to the conclusion that the continuing employment interest established by the Illinois Police disciplinary procedure statute created due process rights in economic and working condition matters. Petitioners submit that the decision of the court of appeals is not supported by *Roth* and *Perry*. In *Roth* this Court stated:

> Property interests, of course, are not created by the Constitution. Rather they are created and *their dimensions are defined by existing rules or understandings* that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. [408 U.S. at 577] [Emphases added.]

Similarly, in *Perry* this Court said:

> A person's interest in a benefit is a property interest for due process purposes if there are *such rules or mutually explicit understandings* that *support his claim of entitlement to the benefit* and that he may invoke at a hearing. [408 U.S. at 602] [Emphases added]

Clearly the Illinois statute relied upon by the court of appeals undertook to define no property rights in the scheduling of employment shifts, vacation schedules, duty assignments, station assignments or any other conditions of employment. Moreover, Illinois reviewing courts have specifically declared that Illinois law does *not* recognize a right in public employees to collective bargaining. *Cook County Police Association v. City of Harvey*, 8 Ill. App. 3d 147, 289 N.E. 2d 226 (1972). Paradoxically, the court of appeals, however, has, on the basis of state-law created rights, authorized imposition upon petitioners of a mandatory collective bargaining procedure. In this step the court's decision has abstracted property interests from a particular Illinois statute and founded upon them due process rights directly contrary to the public policy of the state.

In explaining its derivation of these rights from the Illinois police discipline statute the court of appeals again, as in *Muscare v. Quinn*, 520 F.2d 1212 (7th Cir. 1975) (cert. granted, October 14, 1975; argued March 30, 1976), which concerned a civil service statute substan-

tially the same as that involved herein, relied upon *Goss v. Lopez*, 419 U.S. 565 (1975). In *Goss* this Court held that a state statute which created a claim of entitlement to public education established a property right, thus requiring that a student be given a hearing before a suspension could be imposed. The Court recognized that any suspension, even if of only brief duration, is a deprivation of the right specifically extended by the statute. Similarly in the instant matter the Illinois statute plainly secures a property interest in continuing employment which constitutionally obligates the employer to provide a hearing where it seeks to interrupt, either temporarily or permanently, the employment relationship. But the statute, provides a property interest *only* in the continuing employment relationship. Scheduling of vacations, assignments to particular shifts, and even special duties to which small additional hazard or skill incentive payments may be attached are not related to employment security and are therefore not within the claim of entitlement created by the statute. True, the police officer may have hopes regarding the disposition of these matters but they are nevertheless essentially administrative affairs not related to the officer's tenure. Accordingly, the statute creates no property interest in those matters and in concluding to the contrary the court of appeals has erroneously applied this Court's decisions.

II.

EVEN ASSUMING THAT A GRIEVANCE PROCEDURE IS A CONSTITUTIONAL RIGHT THE CIRCUIT COURT'S INJUNCTIVE INTRUSION INTO THE INTERNAL ADMINISTRATIVE PROCEDURES OF THE RESPONDENT POLICE DEPARTMENT WAS IMPROPER BECAUSE THERE WAS NO FINDING OF CONSTITUTIONAL INADEQUACY IN EXISTING PROCEDURES.

THE DECISION OF THE COURT OF APPEALS IS CONTRARY TO THE DECISION OF THIS COURT IN *RIZZO v. GOODE*, ... U.S. .... (1976), 46 L.Ed.2d 561.

During the pleading and trial of this cause petitioners steadfastly maintained that respondents had no constitutional right to either grievance procedures or collective bargaining. However, petitioners also presented testimony relating to procedures the Chicago Police Department has made available to its members for the presentation of complaints relating to administrative decisions. (R. 176-210) The procedures included a written process whereby grievances could be submitted to departmental superiors outside the aggrieved officer's change of command. Concededly these procedures did not include the full panoply of due process hearing rights. However, as this court noted most recently in *Goss v. Lopez*, 419 U.S. 565, 578 (1975) due process is not an inflexible procedure. Petitioners believe that present grievance procedures fairly protect the interests of members of the Chicago Police Department.

The District Court gave only brief attention to current procedures, for, as a consequence of its conclusion that respondents lacked a constitutional right to grievance procedures, that court found no need to weigh the adequacy of present practices. It is submitted, however, that assuming the Court of Appeals was correct in its conclusion that a constitutional right had been shown, it

should have considered the sufficiency of the procedures already employed by the police department. The court should reasonably have reflected upon the peculiar paramilitary nature of the department, about which the record contained substantial testimony. It should also have considered the types of issues grievances will most frequently include and the balancing of varying departmental needs against individual officer's desires in schedules and assignments. These factors should have been contrasted with the fact-finding goal typical of termination and suspension hearings. The court, however, made no appraisal of or reference to existing procedures but instead directed the imposition of a judicially fashioned procedure.

This Court observed in *Rizzo v. Goode*, ... U.S. ..... (1976), 46 L.Ed.2d 561, 574:

> When a plaintiff seeks to enjoin the activity of a governmental agency, even within a unitary court system, his case must contend with "the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs. *Cafeteria Workers v. McElroy*, 367 U.S. 886, 896 (1961)," quoted in *Sampson v. Murray*, 415 U.S. 61, 83 (1974).

By enjoining upon petitioners a court-made procedure for the resolution of police grievances it is apparent that the court constricts the latitude of the Chicago Police Department in dealing with its members. Assuming that the Court of Appeals was correct in holding that respondents do have a constitutionally guaranteed right to due process procedures for the resolution of work disputes, the court should have imposed a system only after a considered finding that the responsible officials have

failed in their obligation to make available adequate grievance machinery. The court of appeals did not make such a finding.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDIX A

MEMORANDUM OPINION AND ORDER

McLAREN, District Judge.

This matter was tried to the Court without a jury. For the reasons set forth below, judgment for the defendants will be entered and the amended complaint will be dismissed. This opinion shall constitute the Court's Findings of Fact and Conclusions of Law as provided by Fed.R.Civ.P. 52(a).

This is an action[1] for declaratory and injunctive relief. Jurisdiction is based on the First and Fourteenth Amendments to the United States Constitution, 28 U.S.C. § 1331, and 42 U.S.C. § 1983. The Court has jurisdiction of the parties and of the subject matter, and venue is appropriate.

The plaintiffs, the Confederation of Police (COP)[2] and several of its officers, allege that the City of Chicago[3] and its Mayor, Richard J. Daley (Daley) and the

[1] The original complaint, filed on December 17, 1971, had two counts. Count 1, which sought a union dues check off system, was voluntarily dismissed by the plaintiffs after the Police Department agreed to implement that system. An amended complaint was then filed.

[2] COP is an employee organization consisting of the majority of the sworn members of the Chicago Police Department in the patrolman classification. Of the approximately 6200 paying members of COP, approximately 6000 are patrolmen. There are approximately 10,000 active patrolmen in the Chicago Police Department. The president of COP is James Johnson (Johnson).

[3] The City of Chicago is a municipality chartered by the State of Illinois, and a local governmental agency within the meaning of Ill. Rev. Stat. ch. 85, § 472.

Superintendent of Police[4] have denied the patrolmen of the City of Chicago their constitutional rights to an effective means to redress their grievances in connection with their employment by failing to establish and promulgate a grievance procedure and a form of collective bargaining for patrolmen within the Police Department. Plaintiffs further allege that certain of the defendants have discriminated against the policemen by maintaining a procedure for collective bargaining with labor organizations representing employees of the City of Chicago as regards hours, wages and working conditions, and refusing to maintain the same with sworn personnel of the Chicago Police Department who are members of COP, thereby denying plaintiffs the equal protection of the laws.

Several basic facts are not in dispute. COP has continually sought a uniform and objective procedure by which the sworn personnel of the Police Department may seek redress of grievances in connection with their hours, wages and working conditions[5] through representatives of their own choosing. This has been denied to

[4] The Superintendent at the time this suit was filed was James Conlisk. The parties have, by agreement, substituted the current Superintendent, James Rochford.

[5] The types of grievances include matters such as section or geographical transfers, changes in shift (watch) assignments, hours of work and wages. In addition, plaintiffs testified to instances in which patrolmen have been effectively demoted (reassigned) from positions as detectives, youth officers, and radio dispatchers without any notice of the reasons, or knowledge of recourse to any written and promulgated appeal or grievance procedure. The same fact was established for some instances in which patrolmen were passed over for promotion to the same positions, without explanation. It should be noted that although the detective, youth officers, and radio dispatch positions pay about $1,000.00 per year more than other patrolmen, the selection and demotion from the positions is a function of the Superintendent's office

(Footnote continued on following page)

them. There has been no formal[6] system or procedure by which sworn personnel of the Chicago Police Department may seek redress of grievances in connection with their hours, wages and working conditions, except in cases of discharges or suspensions in excess of thirty (30) days, which are referred by statute to the Police Board of the City of Chicago.[7] Additionally, the City of Chicago has maintained a practice whereby it pays the prevailing rate which craft union members are paid in the private sector.[8]

[5] *Continued*
without any form of involvement of the Civil Service Commission. Plaintiffs also protest the fact that they cannot comment upon their efficiency ratings.

Police Department Notice No. 74-10 sets out in detail, however, the procedures to be followed by superiors in rating their subordinates against the objective criteria of quality of work, quantity of work, attendance and promptness, dependability, and indicating what items should be considered under these categories. It cautions that the rater evaluate each member according to the same set of fair and impartial standards and that the ratings should be used by a superior to inform the subordinate of the areas where improvement is needed and to counsel him how to attain an improved level of performance.

In matters of initial placement and promotion, the Civil Service Commission administers examinations; however, it does not determine job qualifications or specifications. That is left to the Police Department and Police Board.

[6] There does exist an informal grievance procedure, common to most occupations, which basically involves complaints to one's superiors. This is not a written procedure. Also, prior to submissions of the proposed budget to the City Council, plaintiffs and other police organizations meet with the Mayor and have the opportunity to present their demands, as do the organizational representatives of other City employees.

[7] Ill. Rev. Stat. ch. 24, § 10-1-18.1 (1974) provides a formal procedure for suspensions of over 30 days in municipalities of more than 500,000 population. The Superintendent can suspend officers for up to 30 days without resort to this section's procedures. Also, Police General Order 67-21 and various amendments establish some procedures for suspensions of less than 30 days.

[8] This places the burden of setting the rate on the private sector bargaining process.

[1] Plaintiffs presented only two instances in which the defendants have allegedly granted collective bargaining rights to municipal employees. The first concerns the non-academic employees of the Chicago Board of Education (Board). It is undisputed that these employees have these rights. It should be noted, however, that the Board is a separate corporate entity, distinct from the City of Chicago, and has its own management and budget. See Ill. Rev. Stat. ch. 122, §§ 34-2, 34-16, 34-17. The fact that the Mayor appoints Board members does not make it an agent of the City, since after their appointment they are independent officers. Also, the fact that the Civil Service Commission administers examinations does not involve the City, since the Commission does not establish the job qualifications or categories, but merely provides an objective testing and grading system. Thus, this evidence is not sufficient to show that the defendants have acted in a discriminatory manner.

The only other evidence submitted in regard to the establishment of a uniform and objective procedure for grievances for other city workers was the testimony of Thomas Beagley, that a grievance procedure was negotiated with Mr. Ralph Newman, President of the Library Board, and other members of the Board, with the Library workers and their union representatives from about March 13, 1967 to December 11 and 12 of 1967, when the procedure was formalized. There was no testimony that the Mayor or the City Council established the grievance procedure for the library workers and Board. In fact, Beagley testified "that as best I can recall, the Mayor asked if there wasn't some way that we could resolve the differences between the union and the library which at that time were rather serious." Beagley then testified that the Mayor made a phone call

and suggested that he (Beagley) go over to the library and see two library officers and attempt to reach an agreement. He later testified that his discussions with the Mayor went to the point of the union's right to represent members of the union who were employees of the Library. He did not see any need to discuss with the Mayor what a grievance procedure was and the Mayor never asked what a grievance procedure was. This discussion with the Mayor arose because a strike had been called against the Chicago Public Library.[9]

The Library is controlled by an independent Library Board. See Ill. Rev. Stat. ch. 81, §§ 117(2), (3) and (9) (1974). However, this does not place the Library in the same position as the Board of Education, nor is it as independent, as its budget is controlled and determined by the City and the City exercises more control over its management. This is similar to the status of the Police Board.

[2] In order to clarify the issue before the Court, it is necessary to understand what rights police officers have in regard to the conditions of their employment. It should first be noted that this case does not involve one's termination from a job or the right to have a job. It involves the conditions of one's job. Thus, this case is unlike, *e.g.*, *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972). It should also be noted that as public employees, police officers do not come under the protection of the National Labor Relations Act. See 29 U.S.C. § 152(2); *Bateman v. South Carolina State Ports Authority*, 298 F.Supp. 999, 1002 (D.S.C. 1969).

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[9] It is common knowledge that when major strikes are called in Chicago, the "good offices" of the Mayor are often used in attempting to resolve the dispute. Mayor Daley acts unofficially as a labor mediator in these instances.

[3-5] The First Amendment rights of association, assembly and free speech allow public employees to join unions. See *id.* at 1003; *Atkins v. City of Charlotte*, 296 F.Supp. 1068, 1075 (W.D. N.C. 1969). An employee cannot be fired merely for joining a union. See *AFSCME v. Woodward*, 406 F.2d 137 (8th Cir. 1969); *Atkins v. City of Charlotte*, 296 F.Supp. 1068 (W.D.N.C. 1969); see also *Classroom Teachers Ass'n v. Board of Education*, 15 Ill. App. 3d 224, 304 N.E.2d 516 (1973); *Local 858 of AF of T v. School Dist. No. 1*, Denver, Colorado, 314 F.Supp. 1069 (D. Colo. 1970). Public employees do not have a full panoply of rights, however. They have no constitutional right to strike and may be subject to anti-strike provisions. See, *e.g.*, *Bennett v. Gravelle*, 451 F.2d 1011 (4th Cir. 1971); *Board of Education of Community Unit School District v. Redding*, 32 Ill.2d 567, 207 N.E.2d 427 (1965); but see *County of Peoria v. Benedict*, 47 Ill.2d 166, 265 N.E.2d 141 (1970); *City of Pana v. Crowe*, 13 Ill.App.3d 90, 299 N.E.2d 770 (1973). Certain other rights may be curtailed due to one's status as a public employee. See *e.g.*, *Crabinger v. Conlisk*, 320 F.Supp. 1213 (N.D.Ill. 1970), aff'd, 455 F.2d 490 (7th Cir. 1972); *COP v. Conlisk*, 489 F.2d 891 (7th Cir. 1973), cert. denied, 416 U.S. 956, 94 S.Ct. 1971, 40 L.Ed.2d 307 (1974); *Gardner v. Broderick*, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968); cf. *Arnett v. Kennedy*, 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974).

[6] The question here is whether police have a constitutional right to a grievance procedure or to make collective bargaining mandatory. As a matter of Constitutional law, this Court agrees with the other courts which have held that no such right exists. See *Lontine v. Van Cleave*, 483 F.2d 966, 968 (10th Cir. 1973); *Newport News Fire Fighters Ass'n Local 794 v. City of Newport News*, 339 F.Supp. 13, 17 (E.D. Va. 1972); *Atkins v. City*

of Charlotte, 296 F.Supp. 1068, 1077 (W.D. N.C. 1969); *Cook County Police Ass'n v. City of Harvey*, 8 Ill.App.3d 147, 289 N.E.2d 226 (1972). As was stated in *Atkins*, *supra* 296 F. Supp. at 1077:

> "There is nothing in the United States Constitution which entitles one to have a contract with another who does not want it. It is but a step further to hold that the state may lawfully forbid such contracts with its instrumentalities. The solution, if there be one, from the viewpoint of the firemen, is that labor unions may someday persuade state government of the asserted value of collective bargaining agreements, but this is a political matter and does not yield to judicial solution."

[7] While certain rights have been granted to public employees in Illinois,[10] the right to bargain collectively and have a grievance procedure is not among them. See, *e.g.*, *Cook County Police Ass'n v. City of Harvey*, *supra*. Although such agreements can be entered into and are enforceable in Illinois,[11] there is no requirement that this be done. Although other states have granted these rights to police,[12] since neither Illinois nor the City of Chicago have done so, the Court will not impose these

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[10] Public employees are included in the workman's compensation program. See Ill. Rev. Stat. ch. 48, § 138.1 (a)(1). The public entity may check off union dues. See Ill. Rev. Stat. ch. 85, §§ 471, 472. This has been agreed to by the City for policemen. There is some uncertainty as to whether public employees may come within the Department of Labor's grievance procedure system. See Ill. Rev. Stat. ch. 10, § 20; Peckler v. Cullerton, 92 Ill. App. 2d 290, 236 N.E. 2d 289, 292 (1968).

[11] See Classroom Teachers Ass'n v. Board of Education, 15 Ill. App. 3d 224, 304 N.E. 2d 516, 518-519 (1973).

[12] See, *e.g.*, N. Y. Civil Service Law, Art. 14, §§ 200, 204 (McKinney's Consol. Laws, c. 7, 1973); see also Comment, The Civil Service-Collective Bargaining Conflict in the Public Sector, Attempts at Reconciliation, 38 U.Chi.L.Rev. 826, 829-30 (1971).

rights. *Cf. American Fed. of Labor v. Watson*, 327 U.S. 582, 598, 66 S.Ct. 761, 90 L.Ed. 873 (1946). The remedy, if any, lies with their legislative bodies, not the Court.

The plaintiff's remaining contentions concern allegedly discriminatory policies followed by defendants. The basic claim is that several of the defendants have made collective bargaining agreements with certain municipal employees, but not with the police, in violation of the Fourteenth Amendment's guarantee of equal protection. This claim fails for several reasons.

First, the evidence is not clear that the defendants have collectively bargained with other municipal employees. The Board of Education employees work for a corporate entity distinct from the City of Chicago and are not under the City's control. The craft union municipal employees are paid the prevailing private sector rate; however, the City does not enter into a collective bargaining agreement or take part in the private sector negotiations.

As to the Library workers, the only other group plaintiffs have mentioned, it is not clear whether the City and Mayor officially entered into the 1967 agreement, whether the Library Board as a corporate entity did so alone, or whether the Mayor unofficially entered the negotiations. The Court believes, however, that even if the City bargained with the Library workers, there has been no discrimination.

[8] As no fundamental right is involved,[13] the issue is whether negotiating with the Library workers and not with police officers is rationally or reasonably related to

[13] See discussion of policemen's right to collective bargaining *supra*.

a legitimate government purpose. See, *e.g.*, *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

[9] But the legislature is not required to cure all evils immediately. It can do so with a step-by-step process. See *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); *Beauboeuf v. Delgado College*, 303 F.Supp. 861 (E.D. La. 1969), aff'd per curiam, 428 F.2d 470 (5th Cir. 1970). It can agree to allow bargaining with some entities and not others. Id.

[10] Also, there is a difference between police officers and library workers.

The requirements of the Police Department are extremely broad. Primarily there is a definite and extensive need for the viability of assignments of personnel, because the department operates 24 hours a day and is the sole law-enforcement agency responsible for policing the City of Chicago. There is a need and responsibility to be able to assign personnel based on crime conditions, time conditions, population areas, requests for service and other similar factors. The Police Department is a type of quasi-military organization because the department cannot afford the luxury of police officers operating as individual units, one officer as one unit. The department must operate as an entity, the officers making up the various organizational sub-units in that integrated structure. The department must be free to make a determination where it can move units at a given time, where it can assign units at a given time or location. There must be some type of internal discipline with strict controls over the activities of the officers. Police officers must be trained to obey orders instantly and immediately and it would be improper for police officers to begin questioning the orders of their superiors

at the time they are issued. The nature of police work, being dangerous and important for the public's welfare, make rational, logical and necessary the decision of the defendants to treat the police differently from other types of employees. The implementation of a formal grievance procedure could tend to bog the entire system down as to the assignments, the validity of assignments, the response to emergency situations, and the assumption of the department's responsibility to the citizens of Chicago and maintaining an adequately staffed police force at all times. Police officers have been treated differently because of the nature of their jobs. See, *e.g.*, *COP v. Conlisk*, 489 F.2d 891 (7th Cir. 1973), cert. denied, 416 U.S. 956, 94 S.Ct. 1971, 40 L.Ed.2d 307 (1974); *Bullock v. Spencer*, 112 F.Supp. 147 (D.D.C. 1953); *DeGrazio v. Civil Service Comm'n of Chicago*, 31 Ill.2d 482, 202 N.E.2d 522 (1964); *Nolting v. Civil Service Comm'n of Chicago*, 7 Ill.App.2d 147, 129 N.E.2d 236, 243 (1955); *cf. Parker v. Levy*, 417 U.S. 733, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974); but see *Dwen v. Barry*, 483 F.2d 1126 (2d Cir. 1973). Although other jurisdictions allow collective bargaining for police officers, and no evidence has been shown to indicate that this has adversely affected operations of their police forces, the decision on the far-reaching demands asserted here is one reserved to the legislature.

For the reasons stated, the amended complaint will be dismissed, each side to bear its own costs.

It is so ordered.

APPENDIX B

Opinion Of The Court Of Appeals

Before FAIRCHILD and CUMMINGS, *Circuit Judges*, and GRANT, *Senior District Judge.**

GRANT, *Senior District Judge*. Plaintiffs appeal from an order denying their claim for "a written procedure for collective bargaining and the processing of grievances in relation to hours, wages and working conditions . . ." We reverse.

The plaintiffs-appellants in this action for declaratory and injunctive relief are the Confederation of Police ("COP") and several of its officers. COP is an employee organization consisting of the majority of the sworn members of the Chicago Police Department in the patrolman classification. Approximately 6,000 of Chicago's 10,000 active patrolmen are among the COP's 6,200 paying members.

The patrolmen's basic concerns pertain to adverse job actions against them short of discharge. Chicago patrolmen are subject to changes in geographic assignment and work schedules without, they claim, effective explanation or review. They are also subject to denials of proposed vacation schedules and leaves of absence, and to demotions which may result in a loss of pay to the

* Senior District Judge Robert A. Grant of the United States District Court for the Northern District of Indiana is sitting by designation.

patrolman in excess of $1,000 per year.[1] Such demotions may apparently be based upon efficiency reports prepared every six months by a patrolman's superior. The patrolmen maintain that such reports are not shown to the officer affected, and that the officer has no effective opportunity to question the accuracy of the reports or to raise countervailing considerations. The patrolmen also suggest that demotions may be made on the basis of their actions within COP.[2]

Appellants relied upon two basic arguments in the district court, and they reassert them here. First, they maintain that, inasmuch as collective bargaining rights and grievance procedures have been extended to the

[1] Plaintiffs testified in the district court to instances in which patrolmen have been effectively demoted through reassignment from positions as detectives, youth officers and radio dispatchers. These positions pay about $1,000 per year more than other patrolman positions.

[2] The district court explained these efficiency reports thusly:

> Police Department Notice No. 74-10 sets out in detail, however, the procedures to be followed by superiors in rating their subordinates against the objective criteria of quality of work, quantity of work, attendance and promptness, dependability, and indicating what items should be considered under these categories. It cautions that the rater evaluate each member according to the same set of fair and impartial standards and that the ratings should be used by a superior to inform the subordinate of the areas where improvement is needed and to counsel him how to attain an improved level of performance.

Evidence in the record indicates that these efficiency reports may not be utilized on each occasion as envisioned by the Notice. Patrolman Walter Viesiada, Treasurer of COP, testified that he had been a detective from December 15, 1967, until March, 1973, (three months after becoming Treasurer of COP), when he was notified that he would be working as a uniformed patrolman. No explanation was offered for this reassignment. Viesiada testified, however, that he read in the *Chicago Tribune* that everyone who had been demoted at the time he was demoted, was demoted for inefficiency. He was never informed of the contents or any efficiency reports concerning him.

non-academic employees of the Chicago Board of Education and to the civil service employees of the Chicago Library System, the defendants' failure to establish such procedures for, and to extend such rights to, patrolmen is claimed to constitute a violation of the equal protection clause of the fourteenth amendment. Secondly, appellants maintain that due process requires that such rights and procedures be extended to them.

In *Confederation of Police v. City of Chicago*, 382 F. Supp. 624 (N.D. Ill. 1974), the district court held that police have no "constitutional (due process) right to a grievance procedure or to make collective bargaining mandatory", in support of which the court cited several collective bargaining cases.[3] The court then addressed the equal protection claim. The district court found that the organization of the Chicago Board of Education was so dissimilar to that of the Police Department that no valid comparison could be drawn for equal protection purposes. Accordingly the court indicated that the operations of the Chicago Library Board provided the only conceivable basis upon which it could find an improper classification among civil service employees of a like nature. Even with respect to library personnel, the court noted that there may have been no involvement of the Mayor of Chicago in negotiations. Nonetheless, the district court went on to address the equal protection claim, holding first that it is no violation of the equal protection clause for the legislature to permit collective bargaining with some entities and not with others. The court further held that there is a rational basis for distinguishing between police officers and library workers

[3] *Lontine v. Van Cleave*, 483 F.2d 966, 968 (10th Cir. 1973); *Newport News Firefighters Ass'n Local 794 v. City of Newport News*, 339 F.Supp. 13, 17 (E.D.Va. 1972); *Atkins v. City of Charlotte*, 296 F.Supp. 1068, 1077 (W.D.N.C. 1969); *Cook County Police Ass'n v. City of Harvey*, 8 Ill. App. 3d 147, 289 N.E. 2d 226 (1972).

in extending collective bargaining rights: because the police department is a quasi-military organization, "it would be improper for police officers to begin questioning the orders of their superiors at the time they are issued." The district court accordingly dismissed the complaint.

The district court seemed to tacitly presume that the patrolmen sought a unitary package of relief—collective bargaining rights and a written grievance procedure—and that they were either entitled to the full package or to nothing at all. We disagree. The issues involved in the demand for a grievance procedure differ greatly from those involved in the demand for collective bargaining rights, and we shall treat them separately here.

I

We turn first to the due process rights of policemen to a written grievance procedure regarding adverse job actions short of discharge.

Any consideration of the due process rights of public employees must begin with an analysis of *Board of Regents v. Roth*, 408 U.S. 564 (1972), and *Perry v. Sindermann*, 408 U.S. 593 (1972). *Roth* dealt with the nonrenewal of the contract of a nontenured teacher; *Perry* dealt with nonrenewal of the contract of a teacher who could point to a policy of the state school which vested him with *de facto* tenure. In *Roth* the Supreme Court held that the nontenured teacher was not entitled to a hearing on his discharge unless he could show that the decision not to rehire him somehow deprived him of an interest in "liberty," or that he had a "property" interest in continued employment. In *Perry*, the Court held that the *de facto*-tenured teacher had shown such a

"property" interest, and thus was entitled to a hearing when the state school decided not to rehire him.

The district court held that because the case at bar deals with conditions of employment rather than termination of employment, *Perry* (and, by implication, *Roth*) did not apply. We do not believe that these landmark cases are limited by their facts.

The distinction between *Roth* and *Perry* is not difficult to draw. The interest of the *Roth* teacher in his employment was created solely by his contract. If "interest" is defined as something emanating from the state through its agencies, the *Roth* teacher had no further interest in his employment upon the expiration of that contract. The *Perry* teacher, however, had an interest which outlived the one-year life of his contract: the *de facto* tenure policy created by the state school vested him with a continuing interest. This interest emanated from the state through its agency, and thus was sufficient to warrant protection by the due process clause.

When *Roth* and *Perry* are so viewed, it becomes evident that the patrolmen in the action before us, like the tenured teacher in *Perry*, have a continuing interest which is to be protected by the due process clause. The continuing employment relationship between the plaintiff patrolmen and the defendants, as agents of the state, vests the patrolmen with a sufficient "interest" in freedom from arbitrary adverse job action.

A sufficient property interest to require due process may be found in an "entitlement" to a particular job. *Goss v. Lopez*, 419 U.S. 565, 572 (1975). If there is such entitlement, then transfer of an individual to a job with less pay or imposing substantially greater burdens is an impairment of this entitlement, a taking of property which can be accomplished only after compliance with

due process procedures. In this case, we conclude that entitlement to the particular job arises from Ill. Rev. Stat. ch. 24, § 10-1-18.1 (1973). This statute provides for a hearing for a suspension of thirty days or more and for termination. We think that a demotion or other substantially disadvantageous change is the kind of loss which can only be imposed after meeting standards of due process.

Because the district court held that the patrolmen had no such procedural rights, it determined neither the extent of those rights nor the amount of protection necessary for them. We cannot determine these issues from the record before us; they must be resolved upon remand. It is not improper for this Court, however, to afford some direction to the district court in this regard.

In the context of the operations of a police department, we do not believe that grievance procedures require a stay of ordered and orderly transfers and demotions. The police department must be capable of immediate response to emergency situations. This capability would be substantially impaired if, for example, patrolmen were permitted to refuse to honor transfers pending exhaustion of grievance procedures. This concern for the effective performance of the police department is no justification for a complete denial of all procedural rights but transfers, demotions and the like should be presumed valid until successfully challenged through the grievance procedures.

The district court should give special attention to the forms that the adverse job action may take. Several such actions have been mentioned here; among the most obvious is the demotion which can cost the policeman up to $1,000 per year. At oral argument, counsel for appellants alluded to other more subtle, non-obvious

adverse actions. Each such action should be analyzed, and the district court must determine whether the rights of the patrolmen encompass freedom from arbitrary imposition of such actions and, if so, how those rights are to be protected.

The grievance procedures to be afforded the patrolmen need not mirror in all respects those afforded other civil servants. The quasi-military quality of the police force does not justify complete denial of all grievance procedures. It does, however, justify use of a different grievance procedure within the police department.

II

As regards collective bargaining, we do not believe that the patrolmen have made out an equal protection claim. Under traditional equal protection analysis, once it has been shown that the "state action" in question benefits one class of those affected and burdens another, it is necessary for the classification to have a rational basis or, if the classification is inherently suspect or infringes upon a fundamental right, the classification must be shown to be necessary to promote a compelling state interest. *James v. Valtierra*, 402 U.S. 137 (1971); *Reitman v. Mulkey*, 387 U.S. 369 (1967); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *McLaughlin v. Florida*, 379 U.S. 184 (1964). Until the first hurdle has been crossed, however—the showing that one class has been burdened while another has been benefitted by the acts of the defendants—equal protection cannot be shown to have been violated. State action cannot violate the equal protection clause if it does not create classifications among, or discriminate between, those affected. *Palmer v. Thompson*, 403 U.S. 217 (1971).

The patrolmen have cited two classes of civil service employees who possess collective bargaining rights. One such group consists of the non-academic employees of the Chicago Board of Education. The district court found, however, that the granting of collective bargaining rights to this group did not constitute discrimination against the patrolmen. The Board of Education is a separate corporate entity with its own management and budget; following appointment by the Mayor, members of the Board of Education are independent officers; job qualifications and categories are established by the Board of Education rather than by the Civil Service Commission. Accordingly, the district court held that the Board of Education was not comparable to the police department for equal protection purposes. We agree. Action taken relative to the non-academic employees of the Board of Education does not constitute discrimination against the patrolmen.

The other group of civil service employees cited by the patrolmen consists of library workers. It is not clear from the record before this Court, however, that the City of Chicago or any of the defendants granted collective bargaining rights to these workers. Thus, the patrolmen have not shown that there has been any discriminatory action by the defendants, and the patrolmen are accordingly on no better footing than were the plaintiffs in *Palmer v. Thompson, supra.* In *Palmer*, the city of Jackson, Mississippi, rather than desegregating its public swimming pools, elected to close all such pools. The plaintiffs alleged that the motive for such action was discriminatory, and hence claimed that the fourteenth amendment had been violated. The Supreme Court held that regardless of the motive for the action, the closing of the pools burdened black and white alike and benefitted neither, and hence could not offend the

equal protection clause. There, as here, the plaintiffs' failure to show discriminatory action foreclosed the claim.

In this action, the district court went on to hold that even if there was differential treatment of civil service employees, it was not violative of the equal protection clause because there exists a rational basis for the differential treatment, and the legislature is not required to treat all groups alike. It is unnecessary for this Court to reach this issue.

Although we refrain from holding today that patrolmen have a *per se* constitutional right to collective bargaining, we recognize that the district court, upon analysis of the protection required for the procedural rights discussed in Part I of this opinion, may conclude that collective bargaining is a necessary adjunct to such protection. That issue is not presently before us, of course, and we thus withhold further comment.

The decision of the district court is reversed and remanded for further proceedings consistent with this opinion.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit